86 - 1268

Supreme Court, U.S.
FILED
JAN 31 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

CHARLES WARREN AND MARLENE D. STELLY,

PETITIONERS-APPELLANTS,

v.

COMMISSIONER OF INTERNAL REVENUE (U.S.),

RESPONDENT-APPELLEE.

PETITION FOR WRIT OF CERTIORARI

CHARLES WARREN STELLY, and
MARLENE D. STELLY,
INDIVIDUAL PERSON, MERE MAN
2014 Hickory Creek
Kingwood, Texas 77339
(713) 358-6112

QUESTIONS PRESENTED FOR REVIEW

1. With regard to the primary Claim or Issue by Petitioners (i.e., that one's wages or salary is NOT taxable as INCOME under the 16th Amendment), does 26 U.S.C. §61 (a), notwithstanding the appeal court's misinterpretation of it in Stellys v. C.I.R. (case nos. 85-2156 and 86-2222), have PRECEDENCE over the U.S. Sup. Ct. decisions cited herein and in Petitioners' earlier briefs?

2. Doesn't the 1st Amendment of the U.S. Constitution ENABLE petitioners to contest I.R.S. interpretations of the tax laws (e.g., 26 U.S.C. 61(a) and the reduction of interest income during periods of inflation according to the recent "Indexing" principal) WITHOUT being charged with civil penalties and sanctions?

3. Doesn't the 7th Amendment of the U.S. Constitution guarantee petitioners the right to a Jury Trial for deciding both the DISALLOWANCES and CIVIL PENALTY CONTROVERSIES in question?

PARTIES

The parties, to the appeal to the U.S. Court of Appeals for the Fifth Circuit were Charles Warren and Marlene D. Stelly, appellants/mere man in case Nos. 86-2156 and 86-2222, whereas appellees were Michael L. Paup, Gary R. Allen, and William A. Whitledge.

TABLE OF CONTENTS

	Page
Table of Authorities	v
Reports	2
Statement of Jurisdiction	2
Relevant Constitutional Provisions	3
Concise Statement of the Case	3
Reasons for Grant of Writ	7
I. The Fifth Circuit Court of Appeal in Stellys v. C.I.R. (case No. 86-2156 and 86-2222) Misinterpreted the Clause "INCOME(s) From Whatever Source Derived" Within Both 26 U.S.C. § 61(a) and the 16th Amendment to the Constitution	7
II. Specifically, Petitioners' main Claim or Issue (i.e., an individual's wages or salary is NOT taxable as INCOME Under the 16th Amendment) and the related Issue of What Is Included in DIRECT TAXES With Reference to Art. 1 sec. 9 cl. 4 of the Constitution HAVE ALREADY BEEN DECIDED by U.S. Supreme Court Rulings	12
III. Facts or Evidence That Should Have Affected the Appeal Court's Decisions in Stellys v. C.I.R. (case Nos. 86-2156 and 86-2222) and Additional Reasons For Grant of Writ	16
Conclusion	22

APPENDIX

Page

ORDER of the United States District Court, Feb. 27, 1986, No. H-85-781...A-1

Decision of the U.S. Court of Appeals for the 5th Circuit, No. 86-2156 entered November 25, 1986.....B-1

ORDER of the U.S. District Court, March 25, 1986, No. H-85-4974.....C-1

Decision of the U.S. Court of Appeals for the 5th Circuit, No. 86-2222, entered November 25, 1986.....D-1

Excerpts from Briefs For Appellants in the U.S. Court of Appeals For the Fifth Circuit, Nos. 86-2156 and 86-2222.....E-1

TABLE OF AUTHORITIES

Cases Page

Helvering v. Morgan's Inc., et al., 293 U.S. 121 (1934).....8

Eisner v. Macomber, 252 U.S. 189, 205, 206, 207, 208, 40 Sup. Ct. 189, 64 L.Ed. 521.....9,10,11,14

Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601, 15 Sup. Ct. 912; Id., 157 U.S. 429, 15 Sup. Ct. 673.....13,15,16

Butchers Union Co. v. Cresent City Co., 111 U.S. 746, 757.....13

Evans v. Gore, 253 U.S. 245, 260, 261, 262, 263.....14,15

Stanton v. Baltic Mining Co., 240 U.S. 103, 112, 113, 36 Sup. Ct. 278, 60 L.Ed. 546.....14

Peck & Co. v. Lowe, 247 U.S. 165, 172, 38 Sup. Ct. 432, 62 L.Ed. 1049.....14

Brushaber v. Union Pacific R.R. Co., 240 U.S. 1, 17, 18, 36 Sup. Ct. 236, 241.....16

Miranda v. Arizona, 384 U.S. 436, 491, 86 Sup. Ct. 1602.....20

Boyd v. U.S., 116 U.S. 616, 635.....21

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NO.

CHARLES WARREN and MARLENE D. STELLY,

Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE (U.S.),

Respondent-Appellee.

PETITION FOR WRIT OF CERTIORARI

The petitioners respectfully pray that a writ of certiorari is issued to review the Decisions of the United States Court of Appeals for the Fifth Circuit, Case Nos. 86-2156 and 86-2222, entered Nov. 25, 1986 regarding petitioners Appeal from previous Decisions (Docket Nos. H-85-781 and H-85-4974) of the U.S. District Court that

were entered respectively on Feb. 27, 1986 and March 25, 1986.

REPORTS

The decisions of the United States Court of Appeals for the Fifth Circuit are reported as case Nos. 86-2156 and 86-2222 entered Nov. 25, 1986. The previous Decisions of docket Nos. H-85-781 and H-85-4974 of the U.S. District Court are also reported as ordered respectively on February 27, 1986 and March 25, 1986.

STATEMENT OF JURISDICTION

The decisions of the United States Court of Appeals for the Fifth Circuit (Nos. 86-2156 and 86-2222) entered on Nov. 25, 1986 and the previous U.S. District Court decisions are sought to be reviewed. Petitioners seek review of these decisions of the Court of Appeals pursuant to 28 U.S.C. §1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

The constitutional provisions involved in this case are as follows:

U.S. Const., Art. 1 Sec. 9 cl. 4

No. Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

U.S. Const., Amendment 1

Congress shall make no law respecting... the right of the people peaceably... to petition the Government for a redress of grievances.

U.S. Const., Amendment 7

... where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...

CONCISE STATEMENT OF THE CASE

Petitioners, Charles Warren and Marlene D. Stelly, in support of their Petition

for Writ of Certiorari hereby state that this is their next step to recover money paid under protest for what the IRS alleges to be a tax, but which we contend to be a nontaxable item according to the Constitution and Supreme Court decisions. Penalties and sanctions due to our position is also being contested. The summary of events is as follows:

1. Petitioners filed a COMPLAINT in U.S. District Court on Feb. 17, 1985 contesting the assessment of three (3) civil penalties and demanding their dismissal, judgment for litigation cost, and a jury trial although they were never informed as to which amended tax returns were involved (Civil No. H-85-781).

2. Realizing that their arguments to contest the three (3) civil penalties in question automatically explained that two

disallowances were due them, Petitioners therefore expanded their COMPLAINT on January 24, 1986 to include the following disallowances:

Calendar Year	Disallowance
1979	$ 1,332.03
1980	$ 7,586.00

3. A Motion for Summary Judgment was filed by the Respondent (C.I.R.) and opposed by Petitioners, but the U.S. District Court Judge, Gabrielle K. McDonald, granted the Respondent's Motion. (See Appendix "A").

4. The Order and Judgment of Judge McDonald was appealed to the U.S. Court of Appeals for the 5th Circuit (Case No. 86-2156), but the appellate court affirmed the decision of the U.S. District Court on November 25, 1986 and added sanctions of $2,000. (See Appendix "B.")

5. Petitioners filed a COMPLAINT in U.S. District Court on August 22, 1985 contesting the Disallowance of its original 1983 tax return and the civil penalty assessment therefrom and demanding award of the Disallowance and litigation cost, dismissal of the civil penalty and a jury trial to decide the case (Civil No. H-85-4974). (The original 1983 tax return was actually an "Administrative Brief, Affidavit, and Notice of Claim By Special Appearance" where a refund of $10,770.11 was requested).

6. A Motion for Summary Judgment was filed by the Respondent (C.I.R.) and opposed by Petitioners, but the U.S. District Court Judge, Gabrielle K. McDonald, granted Respondent's Motion. (See Appendix "C.")

7. The Order and Judgment of Judge McDonald was appealed to the U.S. Court of Appeals for the 5th Circuit (Case No. 86-2222, consolidated with Case No. 86-2156 for briefing), but the appellate court affirmed the decision of the U.S. District Court on November 25, 1986 and added $2,000 sanctions. (See Appendix "D.")

REASONS FOR GRANT OF WRIT

I. The Fifth Circuit Court of Appeal in Stellys v. C.I.R. (case Nos. 86-2156 and 86-2222) Misinterpreted the Clause "INCOME(s) From Whatever Source Derived" Within Both 26 U.S.C. §61(a) and the 16th Amendment to the Constitution.

For several years after the 16th Amendment was supposedly ratified in 1913, the U.S. Supreme Court repeatedly defined what

is taxable INCOME under this Amendment. Therefore, Appellees cannot interpret the vaguely written section of 26 U.S.C. 61(a)(1) in outline form to mean that one's salary is taxable income. Regarding the proper interpretation to any single section of the income tax statute (e.g., 26 U.S.C. 61(a)), Helvering v. Morgan's Inc., et al., 293 U.S. 121 (1934) states as follows:

> ...
> But the true meaning of a single section of a statute in a setting as complex as that of the revenue acts, however precise its language, cannot be ascertained if it be considered apart from related sections, or if the mind be isolated from the history of the income tax legislation of which it is an integral part. See Helvering v. New York Trust Co. 292 U.S. 455, 464, 54 S.Ct. 806, 78 L.Ed. 1361.

Probably the case, through the following quotations, which best explains that "INCOME FROM whatever source derived" does

NOT include "ON THE SOURCE ITSELF", is Eisner v. Macomber:

a) Eisner v. Macomber, 252 U.S. 207, 208,40 Sup. Ct. 189, 64 L.Ed. 521, held

> ..."Derived-from-capital"; the gain-derived-from--capital," etc. Here we have the essential matter: not a gain accruing to capital; not a growth or increment of value in the investment; but a gain, a profit, something of exchangeable value, proceeding from the property, severed from the capital, however invested or employed, and coming in, being "derived"-that is, received or drawn by the recipient (the taxpayer) for his separate use, benefit and disposal-that is income derived from property. Nothing else answers the description.
>
> The same fundamental conception is clearly set forth in the Sixteenth Amendment- "incomes, from whatever source derived"- the essential thought being expressed with a conciseness and lucidity

entirely in harmony with the form and style of the Constitution.

b) Furthermore, Eisner v. Macomber, supra, 205, states how the 16th Amendment MUST be construed:

> The Sixteenth Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted. In Pollock v. Farmers' Loan & Trust Co., 158 U. S. 601, 15 Sup. Ct. 912, 39 L. Ed. 1108, under the Act of August 27, 1894 (28 Stat. 509, 553, c. 349, § 27), it was held that taxes upon rents and profits of real estate and upon returns from investments of personal property were in effect direct taxes upon the property from which such income arose, imposed by reason of ownership; and that Congress could not impose such taxes without apportioning them among the states according to population, as required by article 1, §2, cl. 3, section 9, cl. 4, of the original Constitution.

c) Additionally, Eisner v. Macomber, supra, 206, states that the 16th Amendment does NOT repeal or modify the apportionment requirements of the Constitution for direct taxes upon property, real and personal:

> A proper regard for its genesis, as well as its very clear language, requires also that this amendment shall not be extended by loose construction, so as to repeal or modify, except as applied to income, those provisions of the Constitution that require an apportionment according to population for direct taxes upon property, real and personal. This limitation still has an appropriate and important function, and is not to be overridden by Congress or disregarded by the courts.

d) And Eisner v. Macomber, supra, 206, also states that any definition of INCOME within the 16th Amendment BY CONGRESS is NOT conclusive:

> In order, therefore, that the clauses cited from article 1

> of the Constitution may have proper force and effect, save only as modified by the amendment, and that the latter also may have proper effect, it becomes essential to distinguish between what is and what is not "income," as the term is there used, and to apply the distinction, as cases arise, according to truth and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised.

II. Specifically, Petitioners' main Claim or Issue (i.e., an individual's wages or salary is NOT taxable as INCOME under the 16th Amendment) and the related Issue of what is included in DIRECT TAXES with reference to Art. 1 sec. 9 cl. 4 of the Constitution HAVE ALREADY BEEN DECIDED by U.S. Supreme Court rulings.

The following quotations from some of the many available cases are cited:

a) Regarding DIRECT TAXES, the court stated in Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601, that

> Taxes on real estate being indisputably direct taxes, taxes on the rents or income of real estate are equally direct taxes.
>
> Taxes on personal property, or on the income of personal property, are likewise direct taxes.

b) And the court explained further that an individual's labor is his own or personal property in Butchers Union Co. v. Cresent City Co., 111 U.S. 746,757, when it stated that

> The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and invoidable. (concurring opinion)

c) Paramount to this case in Evans v. Gore, 253 U.S., 263, on verifying that SALARY OF FEDERAL JUDGES NOT RENDERED TAXABLE BY INCOME TAX AMENDMENT, the court held that

> "...What was there [Brushaber Case] said was reaffirmed and applied in Stanton v. Baltic Mining Co., 240 U.S. 103, 112, 113, 36 Sup. Ct. 278, 60 L. Ed. 546, and Peck & Co. v. Lowe, 247 U.S. 165, 172, 38 Sup. Ct. 432, 62 L. Ed. 1049, and in Eisner v. Macomber, 252 U.S. 189, 40 Sup. Ct. 189, 64 L. Ed. 521, decided at the present term, we again held, citing the prior cases, that the Amendment "did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income."
>
> After further consideration, we adhere to that view and accordingly hold that the Sixteenth Amendment does not authorize or support the tax in question.

d) Furthermore, in Evans v. Gore, supra, 260, the court reviews why the income tax amendment prior to the 16th Amendment was ruled unconstitutional by quoting from Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 15 Sup. Ct. 673; Id., 158 U.S. 601, 15 Sup. Ct. 912.

e) And, in Evans v. Gore, supra, 261, the court clearly reported that the LEGISLATIVE INTENT[1] of the 16th Amendment did not extend the taxing powers to INCOME not taxable before such as the wages or salary of individuals.

f) Finally in Evans v. Gore, supra, 262, the court quoting from

---

[1]Cong. Rec., vol. 45, pp. 1694-1699, 2245-2247, 2539-2540.

Brushaber v. Union Pacific R.R. Co., 240 U.S. 1, 17, 18, 36 Sup. Ct. 236, 241, concluded that the essential clause of the 16th Amendment, "tax burden which resulted on the property FROM WHICH THE INCOME WAS DERIVED", had to be distinguished from the SOURCE ITSELF as demanded by the earlier Pollock case.

Therefore, because of the above, petitioners' salary is NOT taxable as income under the 16th Amendment of the U.S. Constitution, NOR can this position EVER be regarded as FRIVOLOUS.

III. Facts or Evidence That Should Have Affected the Appeal Court's Decisions in Stellys v. C.I.R. (case nos. 86-2156 and 86-2222) and additional Reasons For Grant of Writ.

The following facts or evidence were either disregarded or misstated by the District and Appellate Courts in the above mentioned decisions of Stellys v. C.I.R.

a) The civil penalties charged to petitioners do NOT even meet the assessment test which must be proved by the C.I.R. according to Title 26 U.S. Code 6703(a).

Note that petitioners were not even granted a Hearing to debate this key issue for which proof was provided as in Appendix "E" attached herein. Note, too, that the amended 1979 return and petitioners second amended return of 1980 were submitted according to the now existing IRS "indexing" method and interest income was NOT claimed a non-taxable item CONTRARY to that stated in the appellate court's Decision of case

no. 86-2156. Finally, the second amended return for 1980 should never have been assessed a civil penalty in the first place because it is an invalid tax return that was superceded by petitioners third amended return for 1980.

b) Petitioners have been harassed, denied their 1st and 7th Amendment Constitutional Rights, and erroneously assessed sanctions, all of which clearly demonstrates "a horror of injustice" and "abuse of the tax collection process".

Petitioners have an undisputed right to a JURY TRIAL according to both Rule 38 within Title 28 of the U.S. Code and the 7th Amendment to the U.S. Constitution for deciding both the civil

penalties and DISALLOWANCES under controversy which states that

> "... where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

Contrary to the above mentioned appeal court decisions (case nos. 86-2156 and 86-2222), Petitioners contentions as presented herein are NOT frivolous (nor unreasonable) and their right to contest the C.I.R.'s interpretation of individual income tax law is protected by their first Amendment right; therefore, sanctions against the Stellys are unlawful.

The part of the 1st Amendment relevant to this case which states that

> "Congress shall make no law respecting...the right of the people peaceably...to PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES."

is actually like a two edged sword. Petitioners not only have a constitutional right to contest the C.I.R. as in their major contention, but they must also be informed as to how or why their contention is lawfully improper IF it is an incorrect legal position. Unquestionably, the C.I.R. and the District and Appellate courts have failed in this regard.

BESIDES, HOW ELSE CAN ANY CITIZEN CONTEST AN INTERPRETATION OF A TAX LAW OTHER THAN AS PRESENTED BY PETITIONERS, ESPECIALLY AS IN THE CASE OF PETITIONERS' 1983 RETURN?

Regarding one's Constitutional Rights, we bring to the Court's attention the following U.S. Supreme Court rulings:

1) Miranda v. Arizona, 384 U.S. 436, 491, 86 Sup. Ct. 1602 held:

..."Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

2) Boyd v. U.S., 116 U.S. 616, 635, held:

..."It is the duty of the courts to be watchful for the Constitutional rights of the citizen, and against any stealthy encroachments thereon."

c) New evidence and proof that petitioners are due reasonable litigation cost because the C.I.R. now feels that petitioners' stance is no longer unreasonable nor frivolous especially with regard to their 1983 return.

Petitioners have appropriately filed their 1984 and 1985 returns EXACTLY as their 1983 return was filed. On Jan. 12, 1987, petitioners received their full refund check plus interest for late

payment of their 1984 return as filed. On Nov. 22, 1986, petitioners received a "Correction to Estimated Tax" notice stated that a slight increase to their expected 1985 refund would be forthcoming.

These two recent events clearly show that the C.I.R. now considers petitioners' 1984 and 1985 returns to be reasonable, nonfrivolous and acceptable, and since both are identical to the 1983 return in question, the C.I.R. and the lower courts have unquestionably acted unreasonably in these cases; therefore, litigation costs are definitely due petitioners.

CONCLUSION

For all the foregoing reasons, Petitioners respectfully request this Court to issue a Writ of Certiorari to the

United States Court of Appeals For the Fifth Circuit.

Respectfully submitted,

Charles Warren Stelly

s/Charles Warren Stelly

Marlene D. Stelly

s/Marlene D. Stelly
Petitioners-Appellants
Individual Person, Mere Man
2014 Hickory Creek
Kingwood, Texas 77339
(713) 358-6112

January 27, 1986

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

CHARLES W. STELLY, ET UX.,

Plaintiffs,

v. C.A. No. H-85-781

COMMISSIONER OF INTERNAL REVENUE,

Defendant.

O R D E R

Pending before the Court is Defendant's Motion to Dismiss For Summary Judgment and Plaintiffs' Cross-Motion for Summary Judgment. After carefully reviewing the applicable law, the Court concludes that the Defendant's Motion should be GRANTED, and that the Plaintiffs' Motion should be DENIED.

This case arises out of a $1,500.00

civil penalty assessment levied against the Plaintiffs by the IRS on June 25, 1984 ($500.00) and July 9, 1984 ($1,000.00) pursuant to 26 U.S.C. 6702.

The IRS's position is simple. IRS contends that the Section 6702 civil assessments are appropriate because the Plaintiffs filed obvious, incorrect returns which were based upon frivolous positions. The IRS claims that positions such as entitlement to a 13% inflation adjustment deduction to taxable income, and that individual labor wages and interest income are non-taxable are frivolous.

Section 6702 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) authorizes the imposition of civil penalties against an individual who files a tax return which is frivolous or which

is filed to delay or impede the administration of Federal income tax laws.

The Plaintiffs filed forms 1040X and claimed that wages and interest income were not taxable and that they were entitled to a thirteen (13) percent inflation adjustment. However, the Courts have uniformly rejected, the above positions. See Anderson v. United States, 754 F.2d 1270 (5th Cir. 1985); Doyle v. United States, 53 A.F.T.R. 2d 1400 (E.D.Mich. 1984) Wages are clearly income under the internal revenue code. Anderson v. United States, 754 F.2d 1270 (5th Cir. 1985); Lonsdale v. Commissioner, 661 F.2d 71, 72 (5th Cir. 1981). In addition, income is defined as the gains derived from capital, from labor, or from both combined. Eisner v. Macomber, 252 U.S. 189, 207 ( ). Interest income is a gain

derived from capital. Moreover, the tax laws do not recognize an inflation adjustment to income.

For the foregone reasons, the Court concludes that the Plaintiffs' tax returns in issue were based upon frivolous and unsubstantiated grounds. Accordingly,

It is ORDERED, that the Defendant's Motion for Summary Judgment is hereby GRANTED.

It is further ORDERED that the Plaintiff's Cross-Motion for Summary Judgment, which is based on a contrasting position, is hereby DENIED.

The Clerk shall file this Order and provide a true copy to counsel for all parties.

DONE at Houston, Texas, this 27th day of February, 1986.

GABRIELLE K. McDONALD
UNITED STATES DISTRICT JUDGE

APPENDIX B

Charles W. and Marlene D. STELLY,
Plaintiffs-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,
Defendant-Appellee.

No. 86-2156

Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

Nov. 25, 1986.

Appeal from the United States District Court for the Southern District of Texas.

Before CLARK, Chief Judge, GARWOOD and HILL, Circuit Judges.

PER CURIAM:

Despite our earlier warning to Charles and Marlene Stelly that they should "throw in the towel," they now reenter the ring in this tax dispute. Undeterred by our imposing sanctions upon them once, the Stellys decided to try again to show that

wages are not taxable as income. Not surprisingly, the district court did not agree with the Stelly's contention. In the second round of what the Stellys apparently would like to make a fifteen round bout, we affirm and impose further sanctions which will hopefully result in a knockout punch to this litigation.

I.

The Stellys filed federal income tax returns for 1979 and 1980, each of which appeared to be regular on its face and completed in an attempt to comply with the rules and regulations for filing such returns. By way of an amended return for the 1979 tax year, the Stellys asserted that they were entitled to a thirteen percent adjustment for inflation with respect to their interest income because their interest income was less than the

amount that their savings were devalued by inflation. They deducted the adjustment from their previously reported taxable income. The Stellys filed three amended returns for the 1980 tax year. The first amended return (which apparently asserted the same claim for a thirteen percent inflation adjustment to their income) is not in the record and is not in issue here. THe second amended return did not make additional claims, but simply provided more arguments supporting their claim for an inflation adjustment. The last amended return asserted that wages were not income and asked that all taxes paid be refunded.

In the meantime, upon receipt of the Stelly's original 1980 return, the Internal Revenue Service (IRS) determined that interest income from several

financial institutions had not been reported by the Stellys, and issued a statutory notice of deficiency adding those amounts to their income and computing an additional tax. The Stellys subsequently petitioned the Tax Court for a redetermination of the deficiency, asserting that wages are not income and that they were entitled to an inflation adjustment with respect to the interest income they had earned. The Tax Court rejected their claims, and we affirmed the Tax Court's decision. Stelly v. Commissioner, 761 F.2d 1113 (5th Cir.) (Stelly I), cert. denied, - U.S. -, 106 S.Ct. 149, 88 L.Ed.2d 123 (1985). We also awarded the IRS double costs and attorney's fees on that appeal in the amount of $669.77 pursuant to Fed.R.App.P. 38. Stelly v. Commissioner, 761 F.2d 1113

(5th Cir. 1986). In affirming the Tax Court's decision, this court rejected the Stellys' contention that wages are not income and that they are entitled to deduct an adjustment for inflation. Stelly I, 761 F.2d at 1115.

Following receipt of the Stellys' amended return for 1979 and their second and third amended returns for 1980, the IRS determined that each of the amended returns was a frivolous return within the meaning of section 6702 of the Internal Revenue Code of 1954 (the Code), and assessed a penalty in the amount of $500 for each of the frivolous amended returns, for a total of $1,500. The Stellys paid fifteen percent or $75 of each penalty as provided by section 6703(c) of the Code, and, upon denial of their claim for refund of the amounts paid, filed this suit

against the Commissioner of the IRS for a refund of the penalties.

In their complaint in this action, the Stellys alleged that they had been harassed by an IRS collection officer attempting to collect the penalties, asserted that the penalties assessed for their frivolous returns denied them their first amendment right to petition the government for the redress of grievances, and demanded a jury trial. They asked that the penalties by set aside and that they also be awarded damages for harassment. By way of a pleading seeking to expand the original complaint, the Stellys also sought a refund of all the taxes they paid through wage withholding in 1979 and 1980, arguing, once again, that their wages were not income subject to tax.

Both parties moved for summary judgment. The district court denied the Stellys' motion and granted summary judgment in favor of the Commissioner, rejecting as frivolous the Stellys' contentions that wages are not income and that they are entitled to an inflation adjustment. The Stellys filed this appeal.

II.

A.

The Stellys argue first that wages are not taxable as income. This argument need not detain us long. We squarely rejected this in Stelly I, noting that "the frivolity of this argument is patently obvious." Stelly I, 761 F.2d at 1115. See also Granzow v. Commissioner, 739 F.2d 265, 267 (7th Cir. 1984) (citing eleven cases holding that wages constitute gross income within the meaning of section 61(a)

of the Code).

B.

Title 26 U.S.C. 6702 authorizes the IRS to impose a $500 penalty on any individual who files "what purports to be" a tax return if such return (1) contains information that facially indicates that the self-assessment is substantially incorrect, and (2) relies on a frivolous position. Davis v. United States, 742 F.2d 171, 172 (5th Cir. 1984).

The Stellys filed a form 1040 tax return with the IRS for the 1979 tax year in which they claimed a thirteen percent inflation adjustment to their interest income and deducted it from reportable income. Their amended returns for the 1980 tax year asserted that wages and interest income are not taxable, as well as reasserting the thirteen percent inflation

adjustment.

(1). The Stellys' contention that they are entitled to an inflation adjustment to their interest income is plainly incorrect. Section 61 of the Code defines gross income broadly as "all income from whatever source derived," with interest specifically included. 26 U.S.C. 61(a)(4). In order for any part of the Stellys' interest income to escape taxation, there must be a specific statutory provision setting forth the deduction. The Stellys cite no statutory or judicial authority for such an adjustment and there is none. The information the Stellys included on their 1979 tax form was therefore substantially incorrect. On each return, the Stellys claimed a deduction for an inflation adjustment, and reduced their tax liability by the amount of that

deduction. The explanations attached to the amended return for 1979 and the first two amended returns for 1980 made it plain that the claimed deduction was not based upon any interpretation of the Code, but instead upon the Stellys' assertion that they should not be taxed on their interest because the amount of interest they received was less than the amount their savings were devalued by inflation. There is no basis in law or fact for the Stellys' contention; the IRS properly characterized the Stelly's argument as frivolous for purposes of section 6702. Since the prerequisites for the application of section 6702 were satisfied, the IRS properly imposed a penalty against the Stellys under that section.

C.

(2) The Stellys also contend that the imposition of civil penalties under section 6702 violates their right to petition the government for redress of grievances under the first amendment. This claim is also meritless. Every decision which has addressed the question has rejected the contention that section 6702 violates the first amendment. See, e.g., Coleman v. Commissioner, 791 F.2d 68, 72 (7th Cir. 1986); Larsen v. United States, 765 F.2d 939, 941 (9th Cir. 1985); McKee v. United States, 781 F.2d 1043, 1047 (4th Cir.), cert. denied, - U.S. -, 106 S.Ct. 3274, 91 L.Ed.2d 564 (1986); Welch v. United States, 750 F.2d 1101, 1108 (1st Cir.1985); Wall v. United States, 756 F.2d 52, 53 (8th Cir. 1985); Franklet v. United States, 761 F.2d

529,530 (9th Cir. 1985); Drefchinski v. Regan, 589 F.Supp. 1516, 1526 (W.D.La. 1985). We agree that section 6702 does not violate the first amendment. There is no constitutional right to bring frivolous suits such as the one involved here. See Bill Johnson's Restaurants, Inc. v. NLRB, 461 U.S. 731, 742, 103 S.Ct. 2161, 2169, 76 L.Ed. 2d 277 (1983).

III.

Sanctions are appropriate when a frivolous appeal is brought because of the undue burden these cases place on the resources of the courts as well as the government. Sanctions for abuse of the judicial process by bringing frivolous appeals are expressly authorized under several statutory provisions. See, e.g., 28 U.S.C. 1912, Fed.R. App.P 38. These sanctions may include single or double

costs as well as reasonable attorney's fees. As we stated in Stelly I, "(e)ven greater sanctions may be imposed under appropriate circumstances." Stelly I, 761 F.2d at 1115-16. The circumstances of this case lead us to the conclusion that a mere "slap on the wrist" will obviously not get the point across to the Stellys that their arguments are wholly lacking in merit. In some cases where we have imposed sanctions, we have determined the amount of the sanction ourselves. E.g., Botkin v. United States, 797 F.2d 975 (5th Cir. 1986); Willis v. Commissioner, 786 F.2d 1161 (5th Cir. 1986). In other cases, such as Stelly I, we have remanded the case to the district court in order to determine the amount of attorney's fees. See also United States v. Lavoie, 799 F.2d 229 (5th Cir. 1986); Albright v. United

States, 797 F.2d 495 (5th Cir. 1986). In still other cases, we have received filings and then fixed the amount of sanctions based on those filings. E.g., Knoblauch v. Commissioner, 752 F.2d 125 (5th Cir. 1985); Wright v. Commissioner, 752 F.2d 1059 (5th Cir. 1985).

In this case, we choose to follow the first approach and set the amount of the sanction ourselves. In Stelly I we assessed a sanction of slightly under $700. A more severe sanction, however, is appropriate in this case since the Stellys have totally disregarded our previous decision. This is evident by the fact that many of the issues before us in this case are identical to the ones raised in Stelly I. Furthermore, the new issues that the Stellys raise are completely lacking in merit. Setting the sanction

ourselves is approrpiate in this case becuase it saves both government time in preparing and filing of affidavits and judicial time in considering such affidavits. It also serves as an effective sanction for the bringing of this frivolous appeal, serves as a deterrent to the bringing of future frivolous appeals, and compensates the government for at least the direct costs of defending the appeal.

(3) The government's brief indicates that the average amount of attorney's fees and costs incurred by the government in cases such as this is $1,422. In light of the sanctions we have imposed in other tax cases, and given the fact that this is the second time that the Stellys have filed a frivolous appeal, we believe that a monetary sanction of $2,000 should be

imposed upon the Stellys jointly. See, e.g., Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984) ($2,000 award); Hollowell v. Commissioner, 744 F.2d 406 (5th Cir. 1984) (same).[1]

Given the fact that this is the Stellys' second frivolous appeal on some of the same issues, we feel that the circumstances warrant additional sanctions. Consequently, the Clerk of the Court should not accept any new filings by the Stellys for any tax-related apppeals until the sanctions we impose today are paid and proof of satisfaction of all prior judgments is provided.[2] See Schiff v. Simon & Schuster, Inc., 766 F.2d 61, 62 (2nd Cir. 1985) (imposing a similar prohibition); Johl v. Johl, 788 F.2d 75, 76 (2nd Cir. 1986) (same).

IV.

One way or the other, we are determined to stop the growing number of patently frivolous appeals filed by abusers of the tax system whose sole purposes are to delay and harass the collection of public revenues. "Abusers of the tax system have no license to make irresponsible demands on the Courts of Appeals to consider fanciful arguments put forward in bad faith." Granzow, 739 F.2d at 270. Those who do should be held strictly accountable for their conduct.

The fight is over; the judges' scorecards are in; the Stellys have lost. We affirm the district court's grant of summary Judgment in favor of the Commissioner; we assess sanctions in the amount of $2,000 jointly against the Stellys and direct the Clerk of the Court

not to accept any further tax appeals by the Stellys consistent with this opinion.

AFFIRMED.

---

1. Furthermore, the fact that the Stellys are pro se does not bar the imposition of sanctions against them. As we noted in Stelly 1:

> (A)lthough a court can demand a higher degree of responsibility from members of the bar, litigants cannot be treated as free to advance frivolous claims merely because they appear without counsel. Where pro se litigants are warned that their claims are frivolous, as were the Stellys, and where they are aware of the ample legal authority holding squarely against them, then sanctions are appropriate. Stelly 1, 761 F.2d at 1116.

2. By tax-related appeals, we mean any appeal relating to the amount of taxes, penalty, and interest assessed by the IRS against the Stellys, or any challenge to the constitutionality of the IRS' existence, or its ability to enforce the federal income tax laws.

Should the Stellys attempt to use "artful pleading" to get around our prohibition, we give notice that we will not hesitate to impose even more extreme sanctions in the future.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHARLES WARREN AND
MARLENE D. STELLY,

Plaintiffs,

V. C.A. No. H-85-4974

COMMISSIONER OF
INTERNAL REVENUE,

Defendant.

ORDER

Pending before the Court are the Motion to Dismiss and for Summary Judgment of Defendant the Commissioner of Internal Revenue and the Cross-Motion for Summary Judgment (styled "Subsequent Motion for Summary Judgment") of Plaintiffs Charles Warren and Marlene D. Stelly. Having considered the arguments of the parties and the applicable law, the Court is of the opinion that Defendant's Motion should

be GRANTED and that Plaintiff's Motion should be DENIED.

The case at bar concerns a penalty levied pursuant to 26 U.S.C. 6702 for filing a frivolous tax return. Plaintiffs complain that they did not file a frivolous return, in that they correctly refused to include wages and salaries as taxable income for purposes of assessing federal income tax; additionally, Plaintiffs contend that the fee which they must file in order to protest their fine contravenes the first amendment to the United States Constitution. Defendant takes issue with both of those arguments, and the Court considers that Defendant's arguments are correct.

The Court will consider the argument regarding the taxability of wages and salaries first. The Court is persuaded

that the Plaintiffs' contention that wages are not taxable income is spurious. The Supreme Court has affirmed that wages are taxable income, see, e.g., Eisner v. Macomber, 252 U.S. 189, 206 (1919), Subsequent cases supporting that ruling are too numerous to list. Evans & Gore, on which Plaintiffs rely, is not to the contrary. The Evans Court held only that the sixteenth amendment did not authorize taxation of federal judges' incomes, and does not at all address the general question of whether wages are taxable income.

Defendant also correctly contends that section 6702 does not violate the right to petition for redress of grievances guaranteed by the first amendment. See, e.g., Brennan v. Commissioner, 581 F.Supp. 28, 30 (E.D.Mich), aff'd, 757 F.2d 187

(1984); Milazzo v. United States, 578 F.Supp. 248, 253 (S.D.Cal. 1984); Bearden v. Commissioner, 575 F. Supp. 1459, 1461 (D.Utah 1983), citing United States v. Malinowski, 472 F.2d 850 (3d Cir.), cert. denied, 411 U.S. 970 (1973); Pillsbury v. Commissioner, 53 A.F.T.R.2d 785, 787 (E.D.Mich. 1984).

Finally, the Court notes that Defendant argues that the Defendants are immune from suit. "(G)overnment officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982) (citations omitted). Plaintiffs have not taken issue with this argument.

Accordingly, it is ORDERED, ADJUDGED and DECREED that Defendant's Motion be and is hereby GRANTED and that Plaintiffs' Motion be and is hereby DENIED.

The Clerk shall file this Order and provide a true copy to counsel for all parties.

DONE at Houston, Texas, this 25th day of March, 1986.

GABRIELLE K. McDONALD
UNITED STATES DISTRICT JUDGE

APPENDIX D

CHARLES W. and MARLENE D. STELLY,
Plaintiffs-Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE, Defendant-Appellee.

No. 86-2222

Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

Nov. 25, 1986.

Appeal from the United States District Court for the Southern District of Texas.

Before CLARK, Chief Judgment, GARWOOD and HILL, Circuit Judges.

PER CURIAM:

In our opinion filed today in Stelly v. Commissioner, slip opinion p. 1017 - F.2d - (Stelly II), we imposed a sanction of $2,000 on the Stellys jointly and prohibited their filing of any appeals relating to tax litigation until they

provided proof that the sanction was paid. See Stelly II, at slip opinion p. 1021 & n. 2, at - & n.2. In this action, the Stellys challenge assessments made by the Commissioner in regard to their 1983 income tax return on the same theories they asserted in Stelly II. The district court granted the Commissioner's motion to dismiss and the Stellys filed an appeal.

Enough judicial resources have been wasted on the Stellys' jousting with the income tax laws. For the same reasons expressed in our opinion in Stelly II, we find the appeal in this case to be frivolous. Consequently, we impose a monetary sanction in this case of $2,000 on the Stellys jointly and direct the Clerk of the Court not to accept any new filings by the Stellys for any tax related appeals until the sanctions imposed in

this case and in Stelly II are paid and proof of satisfaction of all prior judgments is provided.[1]

AFFIRMED.

1. In carrying out this direction, the Clerk will be guided hereby our comments in n.2 of Stelly II.

APPENDIX E

EXCERPTS FROM BRIEFS FOR APPELLANTS IN THE U.S. CT. OF APPEALS FOR THE 5TH CIR., NOS. 86-2156 & 86-2222.

ARGUMENTS

III.

A review of 26 U.S. Code 6702(a) shows that a civil penalty can be assessed ONLY IF parts (1)(A) or (1) (B) and parts (2)(A) or (2)(B) apply to a tax return. Note that parts (1)(A) and (1)(B) pertain to the information provided on a return; therefore, these two parts cannot apply to Appellants' amended returns since we are contesting Appellee's interpretation regarding items about 'taxable income. Part (2)(B) states that "a desire to delay or impede the administration of Federal income tax laws" must exist, but this part cannot apply to Appellants' amended or original returns because we have filed

under protest for the amount withheld. Part (2)(A) states that "a position which is frivolous" must exist, but neither can this part apply because frivolous means a position that is without merit or substance and is consequently one that cannot be sensibly or rationally explained or argued. How can the salary issue in question be frivolous if the U.S. Supreme Court decided in Evans v. Gore, 253 U.S. 245, that the SALARIES OF FEDERAL JUDGES ARE NOT TAXABLE AS INCOME UNDER THE 16TH AMENDMENT? Specifically in Evans v. Gore, supra, 263, the court held that

> ...
> After further consideration, we adhere to that view and accordingly hold that the Sixteenth Amendment does not authorize or support that tax in question.

(See also Plaintiffs' Rebuttal Argument pgs. 2, 3, 4 and 5 in its "Memo. In

Support of Plaintiffs Response Motion"... filed 4-26-85 regarding Appellee's failure to prove the test of assessment according to 26 U.S. Code §6703(a) for the amended 1979 and 1980 returns.)

The 5th Circuit Court of Appeals should note, consequently, that not even ONE of the four parts of 26 U.S. Code §6702(a) much less any ONE OF THE FOUR POSSIBLE COMBINATIONS apply to Appellants' amended 1979 and 1980 tax returns and the original return for 1983.